

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Implementation of Section 402(b)(1)(A))
of the Telecommunications Act of 1996)

CC Docket No. 96-187

COMMENTS

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SUMMARY

The Commission has proposed measures to implement the specific streamlining requirements of Section 204 (a) (3) of the Communications Act. This new section allows local exchange carriers to make tariff filings under shortened notice periods (7 days for rate decreases, 15 days for rate increases). The Commission requests comment on how this streamlining would affect the lawfulness of tariffs filed and whether tariffs should be reviewed before or after their effective date. The Commission also proposes additional steps for streamlining the tariff process, including a program for the electronic filing of tariffs.

In its Comments, NECA states that streamlined notice periods and presumed lawfulness of tariff filings will benefit all involved. The Commission should use its discretion under section 204(a)(1) to conduct post-effective tariff review so that tariffs may go in quickly and efficiently. Ratepayers will continue to be protected through the section 208 complaint process and the Commission retains the ability to initiate its own investigation of tariff rates under section 205 of the Act.

NECA also states that: 1) the new shortened statutory notice periods should apply to new services as well as terms and conditions filings, and 2) electronic filings could easily be incorporated into the Commission's Internet World Wide Web page, and would provide parties with ease of filing as well as immediate access to tariff filings.

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COMMENTS

Pursuant to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding,¹ the National Exchange Carrier Association, Inc. (NECA),² submits the following Comments. NECA supports the Commission's further efforts to streamline its processes as outlined in this Notice.

The Commission has proposed measures to implement the specific streamlining requirements of Section 204 (a) (3) of the Communications Act.³ This new section allows local exchange carriers

¹ Implementation of Section 402(b)(1)(A) of the Communications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-187, FCC 96-367, (released September 6, 1996) (Notice).

² NECA is a not-for-profit, membership association, serving over 1400 local exchange carrier (EC) study areas. NECA members include all local exchange carriers in the United States, Puerto Rico, the U.S. Virgin Islands and Micronesia. NECA is responsible, under Subpart G of Part 69 of the Commission's rules, for activities including the preparation of access charge tariffs on behalf of all telephone companies that do not file separate tariffs, collection and distribution of access charge revenues, the administration of the Universal Service and Lifeline Assistance programs, and the administration of the interstate Telecommunications Relay Service fund. See 47 C.F.R. § 69.603 and § 64.604.

³ 47 U.S.C. §204(a)(3). The Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 to be codified as 47 U.S.C. §§ 151 *et. seq.* (hereinafter referred to as the Act).

to make tariff filings under shortened notice periods (7 days for rate decreases, 15 days for rate increases). The Commission requests comment on how this streamlining would affect the lawfulness of tariffs filed and whether tariffs should be reviewed before or after their effective date.

The Commission also asks whether or not the new statutory notice periods apply to tariff filings for new services. In addition to several technical tariff filing proposals, the Commission also proposes to establish a program for the electronic filing of tariffs that will permit carriers to file, and the public to access, tariffs by means of dial-up "on line" access.

I. TARIFFS THAT ARE DEEMED LAWFUL SHOULD BE SUBJECT TO POST-EFFECTIVE REVIEW.

The Commission has requested that parties comment on how the Act's language "deemed lawful" is to be interpreted with respect to the regulatory review of tariff changes filed on new shortened statutory notice periods.⁴ NECA believes that "deemed lawful" should be interpreted to mean presumed lawful as described in the Notice.⁵ Given this presumption, and the shortened filing effective periods, the use of pre-effective review would be impractical. The Commission should therefore rely on post-effective review. Since the adoption of the Communications Act in 1934, the Commission has had the discretion as to whether it should act or not act on petitions for suspension and investigation prior to the effective date of the tariff.⁶ The Commission should exercise this

⁴ Notice at ¶¶ 8-15.

⁵ *Id.* at ¶¶ 13-14.

⁶ Section 204 (a)(1) of the Communications Act (47 U.S.C. § 204(a)(1)) states that the Commission "*may* either upon complaint or upon its own initiative without complaint . . . enter upon a hearing . . . *may suspend* the operation of such charge (*emphasis added*). There is no legal requirement for the Commission to act on petitions prior to the effective date of a tariff.

discretion and limit its consideration of the tariff filing to post-effective date review. The courts have supported this interpretation by finding that Commission denial of petitions for rejection or suspension and investigation of a tariff filing “is neither an approval of the filed rates nor a barrier of challenges to their lawfulness.”⁷ Judicial review also supports reliance on section 205 Commission-initiated investigations and the section 208 complaint process as the final determination of lawfulness of the tariff filing.⁸

Post-effective tariff review would eliminate the filing of any petitions for suspension and investigation and allow tariff changes to go into effect on the planned date. Under post-effective tariff review processes, the Commission can undertake any necessary review of tariffs without delaying effective dates. This type of review comports with the intent of the Act which was to provide regulatory relief to the carriers by lessening the notice periods and associated procedures for access tariff filings.⁹ It also eliminates petitions merely interposed for delay or based on deficient

⁷ *American Broadcasting Companies et al. v. FCC*, 662 F.2d 155, 158 (1981) The court goes on to say “[u]nder section 204, the FCC “may” suspend the effectiveness of new or revised rates and “may” initiate an investigation into such rates.”

⁸ If the FCC declines to exercise its suspension and investigation powers, rates become effective on their scheduled effective date. Their lawfulness, however, remains subject to challenge, until the FCC approves the rates after “full opportunity for hearing.” 47 U.S.C. § 205. That hearing may be initiated by filing a complaint under § 208, which requires the FCC to initiate an investigation into the propriety of the rates complained of. An FCC ruling following an investigation under § 208 would be a final ruling on the lawfulness of the tariff and would therefore be judicially reviewable. *Id.*

See also *Maine Public Advocate v. FCC*, 828 F.2d 68 (1987) “A party aggrieved by the tariff may avail itself of the complaint procedure established by 47 U.S.C. § 208 to challenge the tariff’s lawfulness *Id.* at 69.

⁹ See Joint Conference Statement at 186.

grounds. The public also keeps the remedy of the complaint process if it perceives that the tariff changes have resulted in unreasonable rates, terms or conditions.¹⁰

The Commission asked whether it should establish specific rules and procedures governing post-effective reviews.¹¹ NECA believes it would be redundant to establish additional rules and procedures for review. The Commission's ability to institute section 205 investigations and the complaint process available to customers amply protects ratepayers.

NECA does not agree with the Commission's position on carriers who exercise their rights to file tariffs on more than the streamlined notice periods.¹² NECA believes tariffs filed on longer notice periods should be afforded the same legal treatment as those filed under the new statutory notice periods.

II. STREAMLINING OF NECA TARIFF FILINGS

The Commission has proposed that all tariff filings, with the exception of tariff filings for new services, be filed on 7 or 15 day notice depending on whether or not the filing contains a rate decrease or rate increase respectively.¹³ As agent for hundreds of rate of return companies, NECA agrees that all of its tariff filings including the annual access tariff filing and accompanying Tariff Review Plan (TRP), the semi-annual universal service fund tariff filings and most of the various terms and conditions filings should now be filed on the shortened statutory notice periods.¹⁴ For purposes of

¹⁰ See 828 F.2d at 69-70.

¹¹ See Notice at ¶ 24.

¹² Id. at ¶19.

¹³ Id. at ¶2.

¹⁴ Id. at ¶17.

clarification and to fulfill the intent of the law, NECA proposes that the Commission adopt a rule that permits terms and conditions only tariff filings to be filed on seven days' notice.¹⁵ These filing notice periods for NECA tariffs will then be in full compliance with the Communications Act.¹⁶

NECA disagrees with the Commission's tentative proposal that the notice period for the filing of new service offerings should remain the same and not be streamlined.¹⁷ The explicit language of the Act which states that "[a] local exchange carrier may file with the Commission a *new or revised charge, . . .*"¹⁸ does not support the Commission's conclusion. The reference to "charges, classifications, regulation or practices" has been used to designate new and existing telecommunications services since the Act was first adopted in 1934. There is no justification for the Commission to now say that this language excludes new services.

¹⁵ NECA currently files some terms and conditions tariffs (such as changes to issuing carrier information) on less than statutory notice via special permission. NECA expects that even with the shortened notice periods, it may need to request special permissions to file some of its filings in an even shorter time frame. Since the special permission process has eased administration of these changes for both the Commission and NECA, the public interest would be served by the continuance of this practice. NECA, however, is requesting that the Commission use this proceeding as an opportunity to streamline the special permission procedure, for example, by revising the rules to permit an electronic or verbal method of obtaining special permission numbers in place of a paper filing process. See also NECA Comments in PP Docket No. 96-17, Improving Commission Processes, filed March 15, 1996 at 4-6 (Improving Commission Processes Comments).

¹⁶ NECA does not believe that any further documentation such as a filing summary or legal analysis should be required as the Commission tentatively suggests. (Notice at ¶25.) NECA's transmittal letters and Description and Justification (D&J) already provides a summary of proposed changes in rates and how these changes differ from existing rates. In addition, if these changes are being made as a result of legal requirements, the applicable orders or rules are referenced. Transmittal letters and/or D&Js for terms and conditions tariff filings also explain differences between existing and proposed terms.

¹⁷ See Notice at ¶18.

¹⁸ 47 U.S.C.A. § 204(C)(3) (emphasis added).

Concerning some of the technical aspects of the shortened notice periods, NECA agrees with the Commission on use of calendar days rather than working days.¹⁹ NECA agrees that petitions and replies should be hand-delivered to the involved parties but does not agree that special notification of the initial tariff filing should be made to interested parties. Because interested parties have procedures in place to monitor FCC tariff filings, there is no need for additional affirmative notice of pleadings that arrive at the Commission.²⁰ Furthermore, once an electronic filing system is in place, notice of tariff changes will be enhanced without additional administrative burdens on the Commission or the tariff filers.²¹

NECA also agrees that abbreviated orders without extensive findings would suffice when the Commission has found a tariff to be lawful.²² In cases of finding a tariff unlawful, it will be, of course, necessary to provide a legal basis and substantiating factual detail so a carrier may determine how best to correct the problem in future tariff filings.

III. ELECTRONIC TARIFF FILINGS PROPOSAL

The FCC seeks proposals on how it should set up an Electronic Filing System. Specifically, it seeks comment on whether the Commission, or each carrier, should be given responsibility for organizing, posting, and supervising the tariff electronic filing system. NECA strongly supports the

¹⁹ NECA also agrees with the Commission that parties should be required to include intermediate holidays and weekends in the calculation of days for filing petitions and replies. (See Notice at ¶ 28.

²⁰ There is no additional affirmative notice requirement for shortened notice periods associated with non-dominant carrier tariff filings.

²¹ Id. at ¶ 26. See discussion infra at Section III.

²² See Notice at ¶ 33.

use of an electronic filing system and proposes that both the carrier and the Commission have responsibilities for the organization and maintenance of a tariff electronic filing system.²³

The Commission has instituted a comprehensive World Wide Web (WWW) site on the Internet. NECA suggests that the Commission build its electronic tariff filing system on its established web site. Carriers should be required to file their tariffs in HTML (Hyper Text Markup Language) format.²⁴ Currently the most popular word processors available on the market have, or will shortly have, the ability to read, create, or modify HTML documents. Some spreadsheets are also moving in this direction.²⁵

The information available to the public should be on a WWW server that is accessible through an anonymous logon. This logon will provide anyone with Internet access the ability to read the posted tariff transmittals and other relevant documents. The information that the carriers will file should be posted to a separate secured server that is operated by the FCC or an appointed agent. This secured server could be made available over the Internet or through a dial-up capability. Either way, this server should have a security front end that uses a token or single use password. This procedure will ensure that only entities that possess the card or security software generating the one-time password will have access to assigned area.

²³ NECA supports the further efforts of the Commission to increase use of electronic information. See NECA's Improving Commission Processes Comments.

²⁴ This format makes information for the Web Page accessible by the various Browsers available on the market. The use of HTML allows carriers to present the information in their preferred font and format, complete with pictures and diagrams.

²⁵ LOTUS or EXCEL spreadsheets can be posted today to the WWW for download and use on a PC.

Once security is set up, the Commission or its agent could transfer information to a "staging area" or a "filed area." The "staging area" will allow carriers to post a filing before the due date for review of its content and appearance. The "filed area" is where the carriers would place their filings for posting on the public server, the equivalent of making a paper filing. Carriers entering the secured server would be responsible for posting and maintaining their own information. The Commission can block logons or postings to the "filed area" after 5:30 p.m. EST to enforce filing deadlines. Commission staff or its appointed agent could then move the information posted to the filed area on the secured server to the public server. Public notice of the availability of tariff filings could be listed on the FCC's WWW home page.

IV. Conclusion

NECA believes that abbreviated notice periods and presumed lawfulness of tariff filings will benefit carriers, customers and the Commission. The Commission should use its discretion under section 204(a)(1) to conduct post-effective tariff review so that tariffs may go in quickly and efficiently. Ratepayers will be protected by the availability of the section 208 complaints process and the Commission retains the ability to initiate section 205 investigations. By adopting post-effective tariff review, the Commission will be promoting the goals of the Communications Act. Moreover, the new shortened statutory notice periods should apply to new services as well as terms and conditions filings. Finally, electronic filings could easily be incorporated into the Commission's World Wide Web page, and would provide parties with ease of filing as well as immediate access to tariff filings.

Respectfully submitted,

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ASSOCIATION, INC.

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Its Attorney

October 9, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served this 9th day of October 1996, by mailing copies thereof by United States Mail, first class postage paid, or by hand delivery, to the persons listed below.

By: /s/ Jennifer H. Keuch
Jennifer H. Keuch

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